

REMARKS

In the Office Action dated December 23, 2009, claims 21, 22, 24-27, 29 and 30 were rejected under 35 U.S.C. §103(a) as being unpatentable over Weinfurter et al. in view of Cheng. This rejection is respectfully traversed for the following reasons.

The method of independent claim 21 and the adjustment device of independent claim 26 are for the purpose of automatically setting a second hearing aid, which is to replace a first hearing aid worn by a user, with the same operating parameters that are in existence in the first hearing aid. This is for the purpose of alleviating the time-consuming procedure, often requiring the involvement of a trained audiologist, in order to set a replacement hearing aid for a user in a manner that conforms to the current hearing aid being worn by the user.

As explained in the present specification, after a user has worn a particular hearing aid for a period of time, the user becomes accustomed to and comfortable with the settings for that hearing aid. If and when it is necessary to replace the person's current hearing aid with a replacement hearing aid, it is desirable, at least initially, to set the replacement hearing aid parameters to the same parameter settings as the user became accustomed to by wearing and using the first hearing aid.

Conventionally, this was done by an audiologist reading out the parameter settings from the first hearing and transferring the same setting to a second hearing aid, through a transfer procedure requiring the manual involvement of the audiologist, and individual parameter-by-parameter setting of the replacement hearing aid.

This conventional procedure is not needed in accordance with the present invention, by virtue of the first hearing aid being temporarily brought into communication with a device that reads out and stores the parameter settings, and then temporarily bringing the second hearing device into communication with the setting device, so that those same parameters are then automatically used to set the replacement (second) hearing device.

As the Examiner has acknowledged, the Weinfurtner et al. reference does not disclose two different hearing aids, namely a currently-used hearing aid and a replacement hearing aid. The Weinfurtner et al. reference discloses only a single hearing aid, which is temporarily fitted with an auxiliary model 20 so as to place the hearing aid into communication with a control module. Via the control module and the temporarily-fitted auxiliary module, the settings of the hearing aid can be remotely changed.

There is no disclosure in the Weinfurtner et al. reference to make use of such a procedure for any purpose other than setting the currently-worn hearing aid.

The Cheng reference cited by the Examiner has nothing whatsoever to do with hearing aids, and is concerned with allowing non-UPnP (Universal Plug and Play) devices compatible with a conventional UPnP controller. As is clear from claim 1 of the Cheng reference, the so-called bridge device or enabling device is merely a device that effects a transformation between a UPnP-compatible protocol and a non-UPnP-compatible protocol. There is no “setting” of any other device involved, the bridging device merely makes one device usable with another, without internally changing either device.

The only reason why a system of the type disclosed in the Cheng reference might be used in combination with a hearing aid system would be if two hearing aids, or a hearing aid and a hearing aid controller, were, for some reason, not compatible with each other. Even if the Cheng reference were used for that purpose in such a context, there still is no teaching in either of the Cheng reference or the Weinfurtner et al. reference to make use of the transformation procedure disclosed in the Cheng reference for the purpose of automatically setting parameters in a replacement hearing aid to the same settings as were used in a currently-worn hearing aid, as disclosed and claimed in the present application.

Applicants respectfully submit that it is clearly the case that the Examiner has relied on the Cheng reference, and, more likely, that the Examiner has even located the Cheng reference, only after reading Applicants' disclosure and being guided by the contents of Applicants' disclosure. This is clearly an impermissible manner to formulate a rejection under 35 U.S.C. §103(a).

More importantly, however, for the reasons noted above, even if the Weinfurtner et al. system were modified in accordance with the teachings of Cheng, the subject matter of the claims of the present application still would not result.

Conversely, if a person of ordinary skill in the field of hearing aid design, seeking to solve the aforementioned problem of quickly and easily setting a replacement hearing aid to the same parameters as a currently-worn hearing aid, had the insight to make use of techniques relating to transforming a non- UPnP device for use with a UPnP device, this would be an insight supporting patentability, rather than a reason for precluding patentability.

The reasons stated by the Examiner at page 4 of the Office Action, at the end of the paragraph substantiating the rejection of claim 21, as to why a person of ordinary skill in the field of hearing aid design would be motivated to make use of the teachings in the Cheng reference are merely a repetition of the purpose for which the method and setting device disclosed and claimed in the present application are used.

The Examiner has merely repeated those statements from Applicants' specification, with no comparable statements being present in either of the Weinfurtner et al. or Cheng references, with the "conclusion" that repeating those statements in the context of Weinfurtner et al. and Cheng somehow justifies or substantiates the modification proposed by the Examiner. This is pure conjecture on the part of the Examiner, and nothing in the direction of the subject matter disclosed and claimed in the present application is remotely disclosed in Weinfurtner et al. or Cheng.

None of claims 21, 22, 24-27, 29 or 30, therefore, would have been obvious to a person of ordinary skill in the field of hearing aid design, under the provisions of 35 U.S.C. §103(a) based on the teachings of Weinfurtner et al. and Cheng.

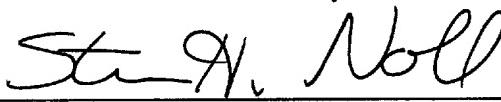
Claims 23 and 28 were rejected under 35 U.S.C. §103(a) as being unpatentable over Weinfurtner et al. and Cheng, further in view of Shennib.

This rejection is respectfully traversed for the same reasons discussed above in connection with the independent claims. For the reasons discussed above, even if the Weinfurtner et al./Cheng combination were further modified in accordance with the teachings of Shennib, the subject matter of claims 23 and 28 still would not result.

All claims of the application are therefore submitted to be in condition for allowance, and early reconsideration of the application is respectfully requested

The Commissioner is hereby authorized to charge any additional fees which may be required, or to credit any overpayment to account No. 501519.

Submitted by,

 (Reg. 28,982)

STEVEN H. NOLL
SCHIFF, HARDIN LLP
CUSTOMER NO. 26574
Patent Department
233 South Wacker Drive, SUITE 6600
Chicago, Illinois 60606
Telephone: 312/258-5790
Attorneys for Applicants.

CH2\8449320.1